

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1100 of 1978

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANIBHAI B PATEL

Versus

HEIRS OF JAHANGIRMIYA DASOTIMIYA

Appearance:

MR SB VAKIL for Petitioner

MR AKIL QURESHI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/03/97

ORAL JUDGEMENT

1. The petitioner has challenged the judgment and order dated 20th April, 1978, of the Gujarat Revenue Tribunal in the revision application No.TEN.B.A.939/77 and prayed for the restoration of the order dated 29th July, 1977 of the Deputy Collector, Anand in Tenancy Appeal No.36/77.

2. The petitioner has come up with a case that he was a tenant and deemed purchaser of the agricultural

lands bearing old survey Nos. 45, 46 and 47 and new survey Nos. 136, 137 and 138 admeasuring 1 acres 38 gunthas, 1 acres 12 gunthas and 1 acre 12 gunthas respectively, situated at Village Anghadi, Taluka Thasra, District Kaira. The respondent, since deceased, was a former landlord of the petitioner in respect of the said lands. On an application made by the petitioner under sec.32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Act, 1948), the A.L.T. and Mamlatdar, Thasra, under its judgment and order dated 18th December, 1976 held that the petitioner was a tenant of the lands in dispute on 1st April, 1957 and that he is a deemed purchaser of the lands under the said provision of the Act, 1948, and determined the purchase price of the said lands at Rs.2900/-.

3. Aggrieved of the aforesaid order of the A.L.T and Mamlatdar, Thasra, the respondent filed an appeal being Appeal No.36/77 before the Court of Deputy Collector, Anand Prant, Anand. The appeal was dismissed under the order dated 29th July, 1977. However, the learned Deputy Collector held that the tenancy of the petitioner is proved to have commenced since 1958-59 and that he would be deemed to have purchased the lands under sec.32-O of the Act, 1948.

4. The respondent has challenged that order of the appellate authority before the Gujarat Revenue Tribunal by filing revision application No.TEN.B.A.939/77. That revision application was allowed under the order dated 24th April, 1978, and the petitioner was held to be not the tenant of the suit lands and the order of the Mamlatdar and the appellate authority have been quashed and set aside. Hence, this Special Civil Application.

5. The counsel for the petitioner has read the judgment of the Tribunal impugned in this Special Civil Application and contended that the Tribunal has committed a serious error in making interference in the finding of fact recorded by the Mamlatdar and the Deputy Collector. It has next been contended that the Tribunal has fall in the error in the proceeding, as if the case of the petitioner was accepted to be proved only on the basis of the document dated 4-5-1970. It has next been contended that there is another serious infirmity in the order of the Tribunal. The document dated 4-5-1970 at one place was held to be not proved and inadmissible in evidence, but in later part of the judgment, it was taken to be the mortgage deed for denying the relief to the petitioner. The counsel for the petitioner, lastly, contended that there was ample evidence, oral and documentary, on the

record of the case and after considering that evidence and the document dated 4-5-1970, the two authorities below have held the petitioner to be the tenant of the suit lands. That evidence has not been referred by the Tribunal, what to say, to consider the same while passing the order impugned in this Special Civil Application.

6. On the other hand, the counsel for the respondents supported the order of the Tribunal.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The document dated 4-5-1970 had been produced on filed of the A.L.T. and Mamlatdar by the petitioner. This document is produced by the petitioner to show and establish that he is the tenant of the respondent in respect of the lands in dispute. The A.L.T. and Mamlatdar relied upon this document and the appellate authority has also considered this document. This document was not exhibited, but this document was the part of the record. This document was held to be not proved and inadmissible in evidence by the Tribunal. It has further been held by the Tribunal that the A.L.T. and Deputy Collector wrongly considered this document and wrongly held that the petitioner is the tenant of the suit land relying on the said document. But, at the same time, this document has been considered on merits by the Tribunal for the purpose of recording the finding against the petitioner that he is not the tenant of the suit lands. Once this document was not proved and inadmissible in evidence, then the same could not have been referred, what to say to rely against the petitioner for deciding the matter against him. That is what exactly has been done in the present case by the Tribunal.

8. The two courses were opened to the Tribunal in this case. Either the matter could have been considered after excluding this evidence i.e. this document or the matter could have been remanded back to the lower authorities to decide the matter afresh after excluding this evidence. However, even if this document is held to be inadmissible for want of registration then in case, this document, tendered in evidence and exhibited then certainly it can be admissible for collateral purposes. I find sufficient merits in the contention of the counsel for the petitioner that there is an error apparent on the order of the Tribunal impugned in this Special Civil Application. The document was there on record and in all the fairness, the petitioner should have been given an opportunity to prove this document, as even if it was not

registered, as stated earlier, it could have taken for the collateral purposes. However, the matter is old, but the Tribunal has not dealt with the matter in correct perspective.

9. The interest of justice will be met in case the matter is remanded back to the A.L.T. and Mamlatdar, Thasra, for deciding the matter afresh after giving an opportunity to the petitioner to prove and exhibit the document dated 4-5-1970 in evidence. It shall be open to both the parties to produce further evidence in the matter which is considered necessary and relevant to the controversy arisen in the present case. However, the matter is old one, and it is expected of the A.L.T. and Mamlatdar, Thasra, to decide the same within a reasonable time, say within six months from the date of receipt of certified copy of this order. The parties are directed to present before the Mamlatdar and A.L.T. concerned on 9th June, 1997 with the certified copy of this order. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-